

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

A&J PRODUCE CORP.

Plaintiff

**V.**

KOREAN PRODUCE BUYING SERVICE,  
INC., t/a K.P.T.

and

YONG H. KIM

## Defendants

Civil No. 07cv7008 (JSR)

**ATTORNEY CERTIFICATION  
WHY NOTICE SHOULD NOT  
BE REQUIRED PURSUANT  
TO RULE 65(b)**

The undersigned represents plaintiff in this action to enforce the trust provisions of the Perishable Agricultural Commodities Act (PACA), 7 U.S.C. §499e(c).

Notice of this motion should not be required because notice will afford defendants an opportunity to dissipate trust assets that are required by statute to be held for the benefit of plaintiff, a PACA trust creditor of defendants.

Defendants are under a statutory duty to pay promptly for produce from the trust established by statute. Defendants have failed to pay, despite repeated demands.

Advising defendants of the pendency of this motion will allow defendants to continue to pay non-trust debts with trust assets prior to the hearing in order to avoid serious personal liabilities, such as criminal liability for failure to pay withholding taxes. As noted in the House Report on the PACA trust amendment, once trust assets are dissipated, it is all but impossible to recover them. H.R. Rep. No. 543, 98<sup>th</sup> Cong., 2d Sess. 4 (1983), reprinted in 1984 U.S. Code & Admin. News 405, 411. See also Tanimura & Antle, Inc. v. Packed Fresh Produce, Inc., 222 F.3d 132 (3<sup>rd</sup> Cir. 2000); J.R.

Brooks & Son, Inc. v. Norman's Country Market, Inc., 98 B.R. 47 (Bkrtcy. N.D. Fla. 1989); A&J Fruit v. Thomas J. Gatziolis & Co., 774 F.Supp. 449 (N.D. Ill. 1991); and Gullo Produce Co., Inc. v. Jordan Produce Co., Inc., 751 F.Supp. 64 (W.D. Pa. 1990).

Entry of a temporary restraining order without notice guarantees the performance of the statutory duty to preserve and pay trust assets, and prevents any further dissipation pending a further hearing, which can be set forthwith.

Dated this 6th day of August, 2007

LAW OFFICES OF BRUCE LEVINSON

By: /s/ Bruce Levinson  
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Attorneys for Plaintiff

Subscribed and sworn before me this 6th day of August, 2007.

/s/ Gregory Brown  
Notary Public